

## Farm Service Agency, USDA

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or to purchase additional lands, subject to the following:

- (1) A written request is received providing details of the use of the funds;
- (2) The loan is not delinquent;
- (3) The loan adequately secured by a general assignment of tribal income.

[66 FR 1567, Jan. 9, 2001; 66 FR 47877, Sept. 14, 2001]

### PART 771—BOLL WEEVIL ERADICATION LOAN PROGRAM

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and Pub. L. 104-180, 110 Stat. 1569.

SOURCE: 67 FR 59771, Sept. 24, 2002, unless otherwise noted.

#### § 771.1 Introduction.

The regulations in this part set forth the terms and conditions under which loans are made through the Boll Weevil Eradication Loan Program. The regulations in this part are applicable to applicants, borrowers, and other parties involved in the making, servicing, and liquidation of these loans. The program's objective is to assist producers and state government agencies in the eradication of boll weevils from cotton producing areas.

#### § 771.2 Abbreviations and definitions.

The following abbreviations and definitions apply to this part:

(a) Abbreviations:

*APHIS* means the Animal and Plant Health Inspection Service of the United States Department of Agriculture, or any successor Agency.

*FSA* means the Farm Service Agency, its employees, and any successor agency.

(b) Definitions:

*Extra payment* means a payment derived from the sale of property serving as security for a loan, such as real estate or vehicles. Proceeds from program assessments and other normal operating income, when remitted for payment on a loan, will not be considered as an extra payment.

*Non-profit corporation* means a private domestic corporation created and organized under the laws of the State(s) in which the entity will operate whose net earnings are not distributable to any private shareholder or individual, and which qualifies under the Internal Revenue Service code.

*Restructure* means to modify the terms of a loan. This may include a modification of the interest rate and/or repayment terms of the loan.

*Security* means assets pledged as collateral to assure repayment of a loan in the event of default on the loan.

*State organization* means a quasi-state run public operation exclusively established and managed by state and/or non-state employees, with all employees currently dedicated to the specific task of eliminating the boll weevil from the cotton growing area of the state.

#### § 771.3 [Reserved]

#### § 771.4 Eligibility requirements.

(a) An eligible applicant must:

(1) Meet all requirements prescribed by APHIS to qualify for cost-share grant funds as determined by APHIS, (FSA will accept the determination by APHIS as to an organization's qualification);

(2) Have the appropriate charter and/or legal authority as a non-profit corporation or as a State organization specifically organized to operate the boll weevil eradication program in any State, biological, or geographic region of any State in which it operates;

(3) Possess the legal authority to enter into contracts, including debt instruments;

(4) Operate in an area in which producers have approved a referendum authorizing producer assessments and in

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which an active eradication or post-eradication program is underway or scheduled to begin no later than the fiscal year following the fiscal year in which the application is submitted;

(5) Have the legal authority to pledge producer assessments as security for loans from FSA.

(b) Individual producers are not eligible for loans.

### § 771.5 Loan purposes.

(a) Loan funds may be used for any purpose directly related to boll weevil eradication activities, including, but not limited to:

(1) Purchase or lease of supplies and equipment;

(2) Operating expenses, including but not limited to, travel and office operations;

(3) Salaries and benefits.

(b) Loan funds may not be used to pay expenses incurred for lobbying, public relations, or related activities, or to pay interest on loans from the Agency.

### § 771.6 Environmental requirements.

No loan will be made until all Federal and state statutory and regulatory environmental requirements have been complied with.

### § 771.7 Equal opportunity and non-discrimination requirements.

No recipient of a boll weevil eradication loan shall directly, or through contractual or other arrangement, subject any person or cause any person to be subjected to discrimination on the basis of race, religion, color, national origin, gender, or other prohibited basis. Borrowers must comply with all applicable Federal laws and regulations regarding equal opportunity in hiring, procurement, and related matters.

### § 771.8 Other Federal, State, and local requirements.

(a) In addition to the specific requirements in this subpart, loan applications will be coordinated with all appropriate Federal, State, and local agencies.

(b) Borrowers are required to comply with all applicable:

(1) Federal, State, or local laws;

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(2) Regulatory commission rules; and

(3) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(i) Borrowing money, pledging security, and raising revenues for repayment of debt;

(ii) Accounting and financial reporting; and

(iii) Protection of the environment.

### § 771.9 Interest rates, terms, security requirements, and repayment.

(a) *Interest rate.* The interest rate will be fixed for the term of the loan. The rate will be established by FSA, based upon the cost of Government borrowing for instruments on terms similar to that of the loan requested.

(b) *Term.* The loan term will be based upon the needs of the applicant to accomplish the objectives of the loan program as determined by FSA, but may not exceed 10 years.

(c) *Security requirements.* (1) Loans must be adequately secured as determined by FSA. FSA may require certain security, including but not limited to the following:

(i) Assignments of assessments, taxes, levies, or other sources of revenue as authorized by State law;

(ii) Investments and deposits of the applicant; and

(iii) Capital assets or other property of the applicant or its members.

(2) In those cases in which FSA and another lender will hold assignments of the same revenue as collateral, the other lender must agree to a prorated distribution of the assigned revenue. The distribution will be based upon the proportionate share of the applicant's debt the lender holds for the eradication zone from which the revenue is derived at the time of loan closing.

(d) *Repayment.* The applicant must demonstrate that income sources will be sufficient to meet the repayment requirements of the loan and pay operating expenses.

### § 771.10 [Reserved]

### § 771.11 Application.

A complete application will consist of the following:

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(a) An application for Federal assistance (available in any FSA office);

(b) Applicant's financial projections including a cash flow statement showing the plan for loan repayment;

(c) Copies of the applicant's authorizing State legislation and organizational documents;

(d) List of all directors and officers of the applicant;

(e) Copy of the most recent audited financial statements along with updates through the most recent quarter;

(f) Copy of the referendum used to establish the assessments and a certification from the Board of Directors that the referendum passed;

(g) Evidence that the officers and employees authorized to disburse funds are covered by an acceptable fidelity bond;

(h) Evidence of acceptable liability insurance policies;

(i) Statement from the applicant addressing any current or pending litigation against the applicant as well as any existing judgments;

(j) A copy of a resolution passed by the Board of Directors authorizing the officers to incur debt on behalf of the borrower;

(k) Any other information deemed to be necessary by FSA to render a decision.

### § 771.12 Funding applications.

Loan requests will be processed based on the date FSA receives the application. Loan approval is subject to the availability of funds. However, when multiple applications are received on the same date and available funds will not cover all applications received, applications from active eradication areas, which FSA determines to be most critical for the accomplishment of program objectives, will be funded first.

### § 771.13 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The borrower, through its authorized representatives will execute all loan instruments and legal documents required by FSA to evidence the

debt, perfect the required security interest in property and assets securing the loan, and protect the Government's interest, in accordance with applicable State and Federal laws.

(c) *Loan agreement.* A loan agreement between the borrower and FSA will be required. The agreement will set forth performance criteria and other loan requirements necessary to protect the Government's financial and programmatic interest and accomplish the objectives of the loan. Specific provisions of the agreement will be developed on a case-by-case basis to address the particular situation associated with the loan being made. However, all loan agreements will include at least the following provisions:

(1) The borrower must submit audited financial statements to FSA at least annually;

(2) The borrower will immediately notify FSA of any adverse actions such as:

(i) Anticipated default on FSA debt;

(ii) Potential recall vote of an assessment referendum; or

(iii) Being named as a defendant in litigation;

(3) Submission of other specific financial reports for the borrower;

(4) The right of deferral under 7 U.S.C. 1981a; and

(5) Applicable liquidation procedures upon default.

(d) *Fees.* The borrower will pay all fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by FSA employees.

### § 771.14 Loan monitoring.

(a) *Annual and periodic reviews.* At least annually, the borrower will meet with FSA representatives to review the financial status of the borrower, assess the progress of the eradication program utilizing loan funds, and identify any potential problems or concerns.

(b) *Performance monitoring.* At any time FSA determines it necessary, the borrower must allow FSA or its representative to review the operations and financial condition of the borrower. This may include, but is not limited to, field visits, and attendance

at Foundation Board meetings. Upon FSA request, a borrower must submit any financial or other information within 14 days unless the data requested is not available within that time frame.

**§ 771.15 Loan servicing.**

(a) *Advances.* FSA may make advances to protect its financial interests and charge the borrower's account for the amount of any such advances.

(b) *Payments.* Payments will be made to FSA as set forth in loan agreements and debt instruments. The funds from extra payments will be applied entirely to loan principal.

(c) *Restructuring.* The provisions of 7 CFR part 1951, subpart S, are not applicable to loans made under this section. However, FSA may restructure loan debts; provided:

(1) The Government's interest will be protected;

(2) The restructuring will be performed within FSA budgetary restrictions; and

(3) The loan objectives cannot be met unless the loan is restructured.

(d) *Default.* In the event of default, FSA will take all appropriate actions to protect its interest.

**PART 773—SPECIAL APPLE LOAN PROGRAM**

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773.23 Exception.

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**§ 773.1 Introduction.**

This part contains the terms and conditions for loans made under the Special Apple Loan Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist producers of apples suffering from economic loss as a result of low apple prices.

**§ 773.2 Definitions.**

As used in this part, the following definitions apply:

*Agency* is the Farm Service Agency, its employees, and any successor agency.

*Apple producer* is a farmer in the United States or its territories that produced apples, on not less than 10 acres, for sale in 1999 or 2000.

*Applicant* is the individual or business entity applying for the loan.

*Business entity* is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

*Cash flow budget* is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. A cash flow budget may be completed either for a 12 month period, a typical production cycle or the life of the loan, as appropriate.

*Domestically owned enterprise* is an entity organized in the United States under the law of the state or states in which the entity operates and a majority of the entity is owned by members meeting the citizenship test.

*False information* is information provided by an applicant, borrower, or other source to the Agency which information is known by the provider to be incorrect, and was given to the Agency in order to obtain benefits for which the applicant or borrower would not otherwise have been eligible.

*Feasible plan* is a plan that demonstrates that the loan will be repaid as agreed, as determined by the Agency.